

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Harman

February 22, 2001

An act to amend Section 2024 of the Family Code, to amend Sections 5003, 5302, and 21111 of, to add Part 4 (commencing with Section 5600) to Division 5 of, and to repeal Section 6202 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as introduced, Harman. Nonprobate transfers: former spouses.

Existing law provides for the transfer of property upon death by various means, including wills, trusts, joint tenancies, insurance policies, and retirement death benefits, among others. Existing law permits a trustee with a power of appointment to distribute property to beneficiaries according to the terms of the trust. Existing law permits the structuring of certain financial accounts so that they will be payable to one person upon the death of another. Existing law permits vehicles to be owned in joint tenancy and, upon death of one of the parties, that ownership may pass to another joint tenant. Existing law provides that dissolution of a marriage revokes a bequest of property made in a will to a former spouse, and revokes a beneficiary designation to a former spouse under the Public Employees' Retirement System, as specified. Existing law provides that dissolution of marriage prohibits a former spouse from receiving the spouse's share under intestate succession.

This bill would provide that specified property transfers to a transferor's spouse upon death would fail if, at the time of death, that person is longer the transferor's surviving spouse, as defined, except

where the transfer is not subject to revocation at time of death, or where there is clear and convincing evidence that the transfers intended to preserve the transfer to the former spouse. This bill would provide that a joint tenancy created between a decedent and the decedent's former spouse is severed if it was created before or during marriage and, at the time of death, the former spouse is not the decedent's surviving spouse, except as specified. This bill would also provide for the property rights of a person who subsequently purchases or encumbrances property in good faith, and would provide that a specified affidavit or declaration in this regard may be recorded. By increasing the duties of local officials processing these documents, this bill would create a state-mandated local program. This bill would provide that holders of certain property may transfer the property in accordance with provisions of specified instruments despite possible inconsistencies with the rights of a person named as a beneficiary except as specified. This bill would permit a court to award damages and fees when a notice of a person claiming an interest certain property is determined to have been filed in bad faith. This bill would delete the definition of spouse from the California Statutory Will. This bill would also make related changes. This bill would be operative on January 1, 2002, but would provide that specified provisions do not apply if the decedent making the nonprobate transfer or creating the joint tenancy dies, or if the dissolution of a marriage terminating the status of a beneficiary occurs, before that date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 2024 of the Family Code is amended to
2 read:

3 2024. (a) A petition for dissolution of marriage, nullity of
4 marriage, or legal separation of the parties, or a joint petition for
5 summary dissolution of marriage, shall contain the following
6 notice:

7 ~~“Please review your will, insurance policies, retirement benefit~~
8 ~~plans, credit cards, other credit accounts and credit reports, and~~
9 ~~other matters that you may want to change~~ *“Dissolution or*
10 *annulment of your marriage may automatically affect the rights of*
11 *your former spouse regarding such things as your will, life*
12 *insurance proceeds, trust benefits, retirement death benefits,*
13 *power of attorney designation, pay on death bank accounts,*
14 *transfer on death vehicle registration, and joint tenancy*
15 *survivorship. You should review these matters, as well as any credit*
16 *cards, other credit accounts, and credit reports to determine*
17 *whether they should be changed or reaffirmed in view of the*
18 *dissolution or annulment of your marriage, or your legal*
19 *separation. However, some changes may require the agreement of*
20 *your spouse or a court order (see Part 3 (commencing with Section*
21 *231) of Division 2 of the Family Code). Dissolution or annulment*
22 *of your marriage may automatically change a disposition made by*
23 *your will to your former spouse.” Code).”*

24 (b) A judgment for dissolution of marriage, for nullity of
25 marriage, or for legal separation of the parties shall contain the
26 following notice:

27
28 ~~“Please review your will, insurance policies, retirement benefit~~
29 ~~plans, credit cards, other credit accounts and credit reports, and~~
30 ~~other matters that you may want to change~~ *“Dissolution or*
31 *annulment of your marriage may automatically affect the rights of*
32 *your former spouse regarding such things as your will, life*
33 *insurance proceeds, trust benefits, retirement death benefits,*
34 *power of attorney designation, pay on death bank accounts,*
35 *transfer on death vehicle registration, and joint tenancy*
36 *survivorship. You should review these matters, as well as any credit*
37 *cards, other credit accounts, and credit reports to determine*
38 *whether they should be changed or reaffirmed in view of the*



1 dissolution or annulment of your marriage, or your legal
2 separation. ~~Dissolution or annulment of your marriage may~~
3 ~~automatically change a disposition made by your will to your~~
4 ~~former spouse.”~~ *separation.”*

5

6 SEC. 2. Section 5003 of the Probate Code is amended to read:

7 5003. (a) A holder of property under an instrument of a type
8 described in Section 5000 may transfer the property in compliance
9 with a provision for a nonprobate transfer on death that satisfies the
10 terms of the instrument, whether or not the transfer is consistent
11 with the beneficial ownership of the property as between the
12 person who executed the provision for transfer of the property and
13 other persons having an interest in the property or their successors,
14 *and whether or not the transfer is consistent with the rights of the*
15 *person named as beneficiary.*

16 (b) Except as provided in this subdivision, no notice or other
17 information shown to have been available to the holder of the
18 property affects the right of the holder to the protection provided
19 by subdivision (a). The protection provided by subdivision (a)
20 does not extend to a transfer made after either of the following
21 events:

22 (1) The holder of the property has been served with a contrary
23 court order.

24 (2) The holder of the property has been served with a written
25 notice of a person claiming an adverse interest in the property.
26 However, this paragraph does not apply to a pension plan to the
27 extent the transfer is a periodic payment pursuant to the plan.

28 (c) The protection provided by this section does not affect the
29 rights of the person who executed the provision for transfer of the
30 property and other persons having an interest in the property or
31 their successors in disputes among themselves concerning the
32 beneficial ownership of the property.

33 (d) The protection provided by this section is not exclusive of
34 any protection provided the holder of the property by any other
35 provision of law.

36 (e) *A person shall not serve notice under paragraph (2) of*
37 *subdivision (b) in bad faith. If the court in an action or proceeding*
38 *relating to the rights of the parties determines that a person has*
39 *served notice under paragraph (2) of subdivision (b) in bad faith,*
40 *the court shall award against the person the cost of the action or*



1 *proceeding, including a reasonable attorney's fee, and the*
2 *damages caused by the service.*

3 SEC. 3. Section 5302 of the Probate Code is amended to read:

4 5302. ~~(a)~~ *Subject to Section 5600:*

5 (a) Sums remaining on deposit at the death of a party to a joint
6 account belong to the surviving party or parties as against the estate
7 of the decedent unless there is clear and convincing evidence of a
8 different intent. If there are two or more surviving parties, their
9 respective ownerships during lifetime are in proportion to their
10 previous ownership interests under Section 5301 augmented by an
11 equal share for each survivor of any interest the decedent may have
12 owned in the account immediately before the decedent's death;
13 and the right of survivorship continues between the surviving
14 parties.

15 (b) If the account is a P.O.D. account:

16 (1) On death of one of two or more parties, the rights to any
17 sums remaining on deposit are governed by subdivision (a).

18 (2) On death of the sole party or of the survivor of two or more
19 parties, (A) any sums remaining on deposit belong to the P.O.D.
20 payee or payees if surviving, or to the survivor of them if one or
21 more die before the party, (B) if two or more P.O.D. payees
22 survive, any sums remaining on deposit belong to them in equal
23 and undivided shares unless the terms of the account or deposit
24 agreement expressly provide for different shares, and (C) if two or
25 more P.O.D. payees survive, there is no right of survivorship in the
26 event of death of a P.O.D. payee thereafter unless the terms of the
27 account or deposit agreement expressly provide for survivorship
28 between them.

29 (c) If the account is a Totten trust account:

30 (1) On death of one of two or more trustees, the rights to any
31 sums remaining on deposit are governed by subdivision (a).

32 (2) On death of the sole trustee or the survivor of two or more
33 trustees, (A) any sums remaining on deposit belong to the person
34 or persons named as beneficiaries, if surviving, or to the survivor
35 of them if one or more die before the trustee, unless there is clear
36 and convincing evidence of a different intent, (B) if two or more
37 beneficiaries survive, any sums remaining on deposit belong to
38 them in equal and undivided shares unless the terms of the account
39 or deposit agreement expressly provide for different shares, and
40 (C) if two or more beneficiaries survive, there is no right of



1 survivorship in event of death of any beneficiary thereafter unless
2 the terms of the account or deposit agreement expressly provide
3 for survivorship between them.

4 (d) In other cases, the death of any party to a multiple-party
5 account has no effect on beneficial ownership of the account other
6 than to transfer the rights of the decedent as part of the decedent’s
7 estate.

8 (e) A right of survivorship arising from the express terms of the
9 account or under this section, a beneficiary designation in a Totten
10 trust account, or a P.O.D. payee designation, cannot be changed by
11 will.

12 SEC. 4. Part 4 (commencing with Section 5600) is added to
13 Division 5 of the Probate Code, to read:

14

15 PART 4. NONPROBATE TRANSFER TO FORMER
16 SPOUSE

17

18 5600. (a) Except as provided in subdivision (b), a nonprobate
19 transfer to the transferor’s former spouse, in an instrument
20 executed by the transferor before or during the marriage, fails if,
21 at the time of the transferor’s death, the former spouse is not the
22 transferor’s surviving spouse as defined in Section 78.

23 (b) Subdivision (a) does not cause a nonprobate transfer to fail
24 in either of the following cases:

25 (1) The nonprobate transfer is not subject to revocation by the
26 transferor at the time of the transferor’s death.

27 (2) There is clear and convincing evidence that the transferor
28 intended to preserve the nonprobate transfer to the former spouse.

29 (e) Where a nonprobate transfer fails by operation of this
30 section, the instrument making the nonprobate transfer shall be
31 treated as it would if the former spouse failed to survive the
32 transferor.

33 (d) Nothing in this section affects the rights of a subsequent
34 purchaser or encumbrancer for value in good faith who relies on
35 the apparent failure of a nonprobate transfer under this section or
36 who lacks knowledge of the failure of a nonprobate transfer under
37 this section.

38 (e) As used in this section, “nonprobate transfer” means a
39 provision of either of the following types:

40 (1) A provision of a type described in Section 5000.



1 (2) A provision in an instrument that operates on death, other
2 than a will, conferring a power of appointment or naming a trustee.

3 5601. (a) Except as provided in subdivision (b), a joint
4 tenancy between the decedent and the decedent's former spouse,
5 created before or during the marriage, is severed as to the
6 decedent's interest if, at the time of the decedent's death, the
7 former spouse is not the decedent's surviving spouse as defined in
8 Section 78.

9 (b) Subdivision (a) does not sever a joint tenancy in either of
10 the following cases:

11 (1) The joint tenancy is not subject to severance by the decedent
12 at the time of the decedent's death.

13 (2) There is clear and convincing evidence that the decedent
14 intended to preserve the joint tenancy in favor of the former
15 spouse.

16 (c) Nothing in this section affects the rights of a subsequent
17 purchaser or encumbrancer for value in good faith who relies on
18 an apparent severance under this section or who lacks knowledge
19 of a severance under this section.

20 5602. (a) Nothing in this part affects the rights of a purchaser
21 or encumbrancer of real property for value who in good faith relies
22 on an affidavit or a declaration under penalty of perjury under the
23 laws of this state that states all of the following:

24 (1) The name of the decedent.

25 (2) The date and place of the decedent's death.

26 (3) A description of the real property transferred to the affiant
27 or declarant by an instrument making a nonprobate transfer or by
28 operation of joint tenancy survivorship.

29 (4) Either of the following, as appropriate:

30 (A) The affiant or declarant is the surviving spouse of the
31 decedent.

32 (B) The affiant or declarant is not the surviving spouse of the
33 decedent, but the rights of the affiant or declarant to the described
34 property are not affected by Section 5600 or 5601.

35 (b) A person relying on an affidavit or declaration made
36 pursuant to subdivision (a) has no duty to inquire into the truth of
37 the matters stated in the affidavit or declaration.

38 (c) An affidavit or declaration made pursuant to subdivision (a)
39 may be recorded.

40 5603. (a) This part is operative on January 1, 2002.



1 (b) Except as provided in subdivision (c), this part applies to an
2 instrument making a nonprobate transfer or creating a joint
3 tenancy whether executed before, on, or after the operative date of
4 this part.

5 (c) Sections 5600 and 5601 do not apply, and the applicable law
6 in effect before the operative date of this part applies, to an
7 instrument making a nonprobate transfer or creating a joint
8 tenancy in either of the following circumstances:

9 (1) The person making the nonprobate transfer or creating the
10 joint tenancy dies before the operative date of this part.

11 (2) The dissolution of marriage or other event that terminates
12 the status of the nonprobate transfer beneficiary or joint tenant as
13 a surviving spouse occurs before the operative date of this part.

14 SEC. 5. Section 6202 of the Probate Code is repealed.

15 ~~6202. —“Spouse” means the testator’s husband or wife at the~~
16 ~~time the testator signs a California statutory will.~~

17 SEC. 6. Section 21111 of the Probate Code is amended to
18 read:

19 21111. Except as provided in Section 21110:

20 (a) If a transfer, other than a residuary gift or a transfer of a
21 future interest, fails for any reason, the property ~~transferred~~
22 ~~becomes a part of the residue transferred under the instrument. is~~
23 *transferred as follows:*

24 (1) *If the transferring instrument provides for an alternative*
25 *disposition in the event the transfer fails, the property is*
26 *transferred according to the terms of the instrument.*

27 (2) *If the transferring instrument does not provide for an*
28 *alternative disposition but does provide for the transfer of a*
29 *residue, the property becomes a part of the residue transferred*
30 *under the instrument.*

31 (3) *If the transferring instrument does not provide for an*
32 *alternative disposition and does not provide for the transfer of a*
33 *residue, the property is transferred to the decedent’s estate.*

34 (b) If a residuary gift or a future interest is transferred to two
35 or more persons and the share of a transferee fails for any reason,
36 the share passes to the other transferees in proportion to their other
37 interest in the residuary gift or the future interest.

38 SEC. 7. Notwithstanding Section 17610 of the Government
39 Code, if the Commission on State Mandates determines that this
40 act contains costs mandated by the state, reimbursement to local



1 agencies and school districts for those costs shall be made pursuant
2 to Part 7 (commencing with Section 17500) of Division 4 of Title
3 2 of the Government Code. If the statewide cost of the claim for
4 reimbursement does not exceed one million dollars (\$1,000,000),
5 reimbursement shall be made from the State Mandates Claims
6 Fund.

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